HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 13197 of 2007

Between:

Kurma Shankaraiah and others

… Petitioners

And

Ramagundam Municipality,
represented by its Commissioner,
Ramagundam and another

… Respondents

:: O R D E R ::

Counsel for the petitioners : Shi M. Srinivasa Swarup
for Sri K.V. Bhanu Prasad

25th June, 2007

Per G.S. Singhvi, CJ

The petitioners, who are civil contractors and are operating at Godavari Khani, Karimnagar District have invoked jurisdiction of this

Court by filing this petition pro bono publico for issue of a mandamus to Ramagundam Municipality (respondent No.1) to undertake road widening programme as per the markings given on either side and to restrain its officers from executing the road widening programme in a jig-jag fashion.

The above mentioned prayer of the petitioners is founded on the bald assertions contained in the affidavit of Kurma Shankaraiah (petitioner No.1) that in furtherance of road widening programme in Lakshmi Nagar area of Godavarikhani Town from Gousya Hospital to Afzal Building road, the authorities of respondent No.1 informed the residents and owners to vacate or clear the houses to the extent of markings to enable them to demolish the marked portion; that the road widening programme has been undertaken without following due process of law, inasmuch as no land acquisition proceedings were initiated by respondent No.1, and that the 12 feet road is sought to be widened to 30 feet, but without following the markings, the work is being executed in a haphazard manner. In paragraph 5 of the affidavit, the deponent has averred as under:

> "It is submitted that, I being a resident of Swathantra Chowk where the road widening programme has been undertaken is facing lot of inconvenience. Further, I submit that, I filed O.S.No.79 of 2007 (Ex.P2) on the file of Jr. Civil Judge, Godavarikhani against Ch. Lasumaiah and Ch. Posham for mandatory injunction by making the respondent as 3rd defendant in the suit, when they made illegal constructions into the public road and when the same is causing inconvenience to the public. In the said suit, the municipality did not respond and it was set ex parte. Because of the silence, we also made a complaint to the Director of Town and Country Planning, Municipal Administration, A.C. Guards, Hyderabad on 31.05.2007 (Ex.P3). There is no response from them also. What I am requesting this Hon'ble Court is to give a direction to the respondent municipality to widen the road as per the markings given by them in the interest of public and free flow of traffic. Now the municipal authorities are about to lay the cement road on the irregularly widened road. Unless, at this stage, suitable direction is given to the 1st and 2nd respondents, they will complete the road which is irregularly widened.

Hence, this writ petition."

We have heard Sri M. Srinivasa Swarup. In our opinion, the writ petition is liable to be dismissed summarily. The question whether the respondents are undertaking road widening programme without acquiring the land of the owners and whether the work is being executed as per the approved programme require investigation into the issues of act, and that exercise cannot be undertaken by the High Court in exercise of power under Article 226 of the Constitution of India.

The petitioners' grievance about utilisation of the private property for road widening purpose without resorting to the procedure prescribed under the Land Acquisition Act cannot be entertained in a public interest litigation because it is neither their pleaded case nor any material has been placed before the Court to show that the persons whose property is sought to be utilised are not in a position to seek court's intervention on account of poverty, illiteracy or any other similar disability.

For the reasons aforestated, the writ petition is dismissed leaving the petitioners free to avail remedy by filing civil suit or by making appropriate representation to the State Government to direct the municipal authorities to execute the approved programme without any discrimination and after following the procedure established by law. It will also be open to the owners of the properties to avail appropriate legal remedy.

As a sequel to dismissal of the writ petition, WPMP.No. 16513 of 2007 filed by the petitioners for early hearing of the petition is disposed of as infructuous.

G.S. SINGHVI, CJ

25th June, 2007

C.V. NAGARJUNA REDDY, J

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